THE SETTLEMENT OF INDUSTRIAL DISPUTES IN CANADA

In considering means of prevention or settlement of trade disputes, it may be admitted that the state cannot, without adopting tyrannical measures, on the one hand compel a body of men to continue work under conditions judged by them unfavorable, or on the other hand compel an employer to continue operations under circumstances declared by him to be adverse. An attempt to do either of these things would be regarded by Americans as an intolerable encroachment upon the liberty of the subject. Owing, however, to the complexity of modern industrial conditions, and to the intimate dependence of one branch of industry upon others, a temporary check to the normal course of industrial operations in one line may spread its baneful influence far and wide, and it would seem to be a duty of the state to save the public from general disaster. Here lies the warrant of the state for intervention between employers and their employees, when variances tend toward strikes or lockouts, and consequent cessation of work. The question then arises as to what method of intervention the state should adopt.

In the solution of this problem, Canada has achieved during recent years an encouraging measure of success, and it is the purpose of the writer in this paper to indicate what methods have been there adopted, and the extent to which ends sought have been attained. Three laws relating to trade disputes have been passed by the Dominion Parliament: the Conciliation Act of 1900, which provided among other things for the friendly mediation of an officer appointed by the minister of labor, upon consent of both parties to a dispute; the Railway Labor Disputes Act of 1903, which provided means for compulsory investigation of trade disputes affecting railways; and the Industrial Disputes Investigation Act of 1907, which provided machinery for the thorough investigation of all trade disputes of importance, with special provisions to guard against strikes or lockouts in mines and industries of public utility.

The Conciliation Act of 1900, based upon English experience, takes advantage of the fact that, when the relations between two parties are strained, a reconciliation is often most easily effected through the friendly offices of a disinterested outsider, acceptable

to both, who is in a position to act as a go-between. So far as it goes this method has proved eminently successful, no less than forty-six disputes having been brought to a close through the Conciliation Act during the past seven years—in three cases without the cessation of work for a single day.

While this act thus proved to be fairly effective in hastening the termination of trade disputes, it was inadequate as a means of preventing strikes or lockouts, owing to the absence of any compulsory features. The minister was indeed empowered to take action in the way of inquiry, without application from either of the parties to a dispute, but this clause of the act was never put into operation, it being deemed inexpedient for the department to take the initiative, when opportunity was afforded for either party to make application for its friendly intervention.

A strike on the Canadian Pacific Railway, which seriously hampered transportation in the West during the summer months of 1901, showed the necessity of further legislation for protection of the public. Accordingly, in the session of 1902, a bill was introduced by the minister of labor, providing for compulsory arbitration of trade disputes affecting railways. As this measure involved a principle new to Canada, steps were taken by the Department of Labor to ascertain if it would be acceptable. On the discovery that most of the labor organizations were opposed to compulsory arbitration, and that the general public was doubtful of its expediency, the arbitration bill was withdrawn, and, in 1903, a new act was passed providing for the compulsory investigation of railway labor disputes. Instead of requiring employers and employees to abide by the decision of a judicial body, as in compulsory arbitration, the new law required them, on the appointment of a board of arbitrators, to produce any necessary documents, and to attend meetings of the board as witnesses under oath, when called upon to do so. Provision was made for the publication of the report of the Board of Arbitration, in order that, whenever necessary, the powerful influence of public opinion might be brought to bear on matters in dispute. But before the establishment of a board of arbitration, it was provided that any dispute which threatened a strike or lockout in the railway industry might be referred to a committee of conciliation, mediation, and investigation. Whether owing to the existence of this law or from other causes, Canada was remarkably free from railway labor disputes during the next four years. In all that time only one

application was made under the act, for the appointment of a committee of conciliation. This was a case affecting the Grand Trunk Railway Company and its telegraphers.

During 1903, negotiations had been entered into by a committee of the Railway Telegraphers' Union with the company, which led to a conference between this committee and the manager and superintendents of the company. Some increases in wages were offered, but as no changes in the rules were conceded the men refused to accept the terms, and the conference was closed. On April 25, 1904, the men made an appeal to the Department of Labor for intervention under the Labor Disputes Act. Before the appointment of a committee of conciliation, however, another conference was arranged by the minister of labor, in which an agreement was reached on nineteen points out of twenty-two. A conciliation committee was then appointed to consider the three points which remained unsettled, the telegraphers declaring that a strike would follow if such action were not taken. The conciliation committee, failing to bring about a settlement, was constituted a board of arbitration on the consent of both parties to the dispute, and delivered an award on February 20, 1905. While this award, which favored the claims of the men on two points, was not accepted by the company, it led to a new agreement being drawn up to be in force for two years. The act was thus eminently successful in preventing a disastrous industrial conflict on the only occasion when it was put into operation.

In 1906, another dispute broke out, which threatened suffering and deprivation over a wide extent of territory, and which pointed to the necessity of further legislation to avert such calamities. The dispute was a strike of coal miners at Lethbridge, Alberta, which began on March 9, and continued until December 2. A number of communities in Southern Alberta were dependent on these mines for a winter supply of coal. When cold weather set in many people were unable to obtain sufficient fuel to warm their houses, and great suffering was in prospect. The dispute was finally settled through the friendly mediation of the Department of Labor and, with resumption of active operations in the mines, the condition of affairs began steadily to improve.

As a result of this strike, the Industrial Disputes Investigation Act, 1907, was passed at the next session of Parliament. This act, while in some respects involving a new departure in the treatment of

trade disputes, is in reality a natural development of the policy adopted in the Railway Labor Disputes Act, of 1903. The general principle embodied in it is that of compulsory investigation, upon application of one of the parties, if the dispute affects a mine or a public service utility; or upon the joint application of both parties, if it affects any other industry. The term "public service utility" includes any agency of transportation or communication, such as railways of all kinds, steamships, telegraph and telephone lines, gas, electric light, water and power works. Upon an application for the appointment of a board of conciliation being received, each of the parties is notified by the Department of Labor, and requested to nominate his respective member of the board. The two members so designated choose a third, who acts as chairman. If either party fails to make a nomination, or if the two members chosen fail to agree upon a chairman, then the minister of labor has the power of appointment to this board. No person is allowed to act as a member of a board, if he has any direct pecuniary interest in the issue at stake. An application for the establishment of a board must be accompanied by a statement setting forth the parties to the dispute, the nature and cause of it, an approximate estimate of the number of persons affected, or likely to be affected by it, and the efforts made by the interested parties to adjust their differences. A statutory declaration must also be forwarded at the same time to the effect that, failing a settlement, a lockout or strike will, according to the best knowledge and belief of the applicant, be declared, and that the necessary authority to declare such strike or lockout has been obtained. Copies of the application, statement, and declaration must be sent by the applicant at the same time to the other party to the dispute.

As soon as the board is formed, its express duty is to endeavor to bring about a settlement of the dispute, and it is supposed, and empowered, to adopt any means which it may deem right and proper for inducing the parties to come to a fair and amicable arrangement. While the board has full judicial powers in respect to summoning and examining witnesses, and in requiring the production of necessary documents, it must clearly be distinguished from a judicial court, as regards its aim. It is the duty of a court to weigh the evidence presented, and to pronounce judgment upon it, the judgment being enforceable by law, whereas it is the duty of a board under this act constantly to endeavor to bring the opposing parties to-

gether in a friendly agreement, to procure evidence bearing on their differences, with the view of a right understanding of them, and finally, if no settlement is arrived at, to make recommendations in plain language as to what in the board's opinion ought or ought not to be done by the respective parties concerned. These recommendations are published in the *Labour Gazette,* and the publicity thus given to them enables the force of an informed public opinion to be brought to bear on a dispute, should either party prove obdurate in holding out against just terms of settlement. In order further to remove the judicial aspect from the sittings of the board, it is provided that no counsel or solicitor shall be entitled to appear or be heard before the board, except with the consent of the parties to the dispute. Even with this consent the board may decline to allow counsel or solicitors to appear.

Any strikes or lockouts in the industries particularly named in the act are prohibited prior to or pending reference to a board, and employers and employees are required to give at least thirty days' notice of an intended change with respect to wages or hours.

In the first six months of its existence, the act was invoked no less than thirteen times, the application being, however, withdrawn on two occasions. Only once has a board failed to avert a strike. It is true also, that prior to the appointment of a board, in industries affecting public utilities, some strikes have taken place in spite of the act. Most of these, however, would not have occurred had the law been clearly understood, and as a general rule work was resumed soon after the men became aware of the unlawfulness of their action. On another occasion, the act was indirectly the means of bringing a dispute to an end. This was in a strike of copper miners in British Columbia, who were prosecuted by their employers for going on strike contrary to law. The act had not been invoked by either party, and it was contended by the defense that it did not apply in this instance, but instead of pronouncing a decision, the magistrate before whom the case was brought up, adjourned the case in order to give the parties an opportunity of reaching an understanding with each other. Certain facts brought out in the court showed that the strikers had acted under a misapprehension, and consequently a settlement was reached without much difficulty.

The disputes which have been settled under the act have involved many classes of labor. Among them was a dispute between the Machinists' Union and the Grand Trunk Railway Company, which

had begun in the spring of 1905. Another involved the longshoremen of the port of Montreal, and menaced, if not settled, not only the trade of Montreal, but almost the whole sea-borne commerce of the province of Quebec. A threatened strike of locomotive engineers, which would have tied up the whole system of the Grand Trunk Railway Company, was averted by the formation of a board, an agreement being eventually signed to be in force for three years. In only one case was a joint application made for a board in an industry not affecting mines or public utilities. This was in a dispute involving two thousand two hundred cotton-mill hands at Valleyfield, Quebec, and resulted in an agreement which provided for a permanent committee of conciliation.

The success of a measure of this nature depends largely upon the attitude of employers and employees toward it. If it failed to meet the approval of either party, its usefulness might be entirely destroyed. Fortunately it has almost invariably given general satisfaction to both sides. Up to the end of September, five applications for conciliation boards had been made by employers and eight by employees, while one application was made jointly by a company and its workpeople. At the annual convention of the Trades and Labor Congress of Canada, held at Winnipeg in September, at which nearly thirty-three thousand trade unionists were represented, the act received much consideration. The principle of the act was indorsed by a vote of eighty-one to nineteen, and by a vote of fifty-nine to twenty-two, a resolution was carried, recommending that all trades be brought under the act. Whether it will be deemed advisable to extend the compulsory principle of this law thus far remains to be seen. As regards the industries to which it specifically applies, it has already fulfilled the most sanguine hopes of its sponsors, and has been the means of promoting a better understanding between capital and labor, of removing many causes of friction, and of preventing incalculable loss to the community.

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